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FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of

Revision of the Commission's Rules to
 Ensure Compatibility with Enhanced 911
 Emergency Calling Systems

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CC Docket No. 94-102

To : The Commission

**COMMENTS OF THE
 RURAL TELECOMMUNICATIONS GROUP
 IN SUPPORT OF
 PETITIONS FOR RECONSIDERATION FILED BY
 BELL SOUTH CORPORATION AND THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

The Rural Telecommunications Group ("RTG"), by its attorneys and pursuant to the Federal Communications Commission's ("FCC" or "Commission") Public Notice, Report No. 2258 (rel. Feb. 26, 1998), hereby submits these comments supporting the Petitions for Reconsideration filed on February 17, 1998, by BellSouth Corporation ("BellSouth") and the Cellular Telecommunications Industry Association ("CTIA") (collectively, "Petitioners") in the above-captioned proceeding to the extent that they advocate affording commercial mobile radio service ("CMRS") providers uniform limitations on liability in the carriage of enhanced 911 ("E-911") emergency calls.¹

¹ CTIA addresses several E-911 issues in its Petition for Reconsideration. For the purpose of these comments, RTG is limiting its support to CTIA's discussion of CMRS limited liability for CMRS carriers; CTIA's Petition for Reconsideration at 10-16.

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STATEMENT OF INTEREST

RTG is an organized group of rural telephone companies formed to promote the efforts of rural telecommunications providers to speed the delivery of new, efficient and innovative technologies to the populations of remote and underserved areas of this country. RTG's members are both CMRS licensees and CMRS applicants who have or will have a statutory obligation to forward all 911 calls placed to their systems, regardless of the existence of a contractual relationship between the carrier and the callers. Therefore, RTG is an interested party in any action involving the issue of carrier liability related to the forwarding of 911 and E-911 emergency calls.

DISCUSSION

RTG supports the requests of BellSouth and CTIA that the Commission reconsider its decision not to afford CMRS carriers uniform limitations on liability with respect to the forwarding of 911 and E-911 calls. Carriers and the Commission are in agreement that exposure to liability in the provision of E-911 services is a concern for all CMRS providers, especially under circumstances where the caller has no contractual relationship with the carrier. The Commission expressed its understanding of the problem in its *Memorandum Opinion and Order (MO&O)* in this proceeding when it stated:

We recognize, however, petitioners' claim that they cannot contractually insulate themselves from liability when non-subscribers use their systems. Because covered carriers are required to transmit 911 calls from all handsets regardless of subscription, we agree with [Southwestern Bell Mobile Systems, Inc.] that it

would appear reasonable for a carrier to attempt to make the use of its network by a non-subscriber subject to the carrier's terms and conditions for liability.²

Yet, the Commission stops short of assuaging the problem by declining to adopt a "single national standard of liability" for the provision of 911 services³ on the basis of the ambiguous statement that, "... we do not believe that the lack of a single national standard of liability should cause delay in the implementation of effective wireless 911 services."⁴ This statement is susceptible to two interpretations. One interpretation is that the statement is an expression of Commission policy choosing timely implementation over a uniform national standard (*i.e.*, the Commission is stating it will not delay its E-911 implementation schedule for lack of uniform national liability standards). The other interpretation is that the statement constitutes prognostication that a lack of a national standard will not prevent CMRS carriers from actually deploying E-911 services. If the former interpretation represents the Commission's intent, then RTG supports BellSouth's contention that "the Commission should amend Section 20.18 to make clear that wireless providers are not obligated to provide E-911 within a state until the state limits the liability of wireless providers regarding the provision of E-911 service."⁵ If the latter interpretation accurately reflects the Commission's intent, then the statement simply notes the obvious, which is that lack of a national liability standard cannot slow the deployment of E-911

² *In re* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Memorandum Opinion and Order*, CC Docket 94-102, RM 8143, at ¶ 140 (rel. Dec. 23, 1997) (footnote omitted).

³ *Id.* at ¶ 139.

⁴ *Id.*

⁵ BellSouth's Petition for Reconsideration at 7.

service “because covered carriers *must* deploy E911 services pursuant to [the Commission’s] rules regardless of indemnification by the PSAPs,”⁶ and “regardless of subscription”⁷ or the existence or absence of any type of liability safeguard. By expressly recognizing on the one hand that CMRS providers have a legitimate “concern over potential exposure to liability in the provision of 911 services,”⁸ and then overtly refusing to assist in the lessening of the potential for harm, the Commission is essentially ordering CMRS providers out to sea without life jackets.

The variables of E-911 service provision that expose carriers to liability apply equally to all CMRS providers, rural or urban. These include the obligation to transmit 911 calls from all wireless handsets regardless of whether the caller is a subscriber to the carrier’s services, or where the call originates, *i.e.*, whether the caller is roaming outside his or her service area, or whether a carrier’s service area spans more than one state jurisdiction. Furthermore, in many cases, the existence of a subscriber/carrier contractual relationship may not adequately express the terms and conditions associated with the carrier’s rights and obligations as imposed by the states with respect to the provisioning of 911 and E-911 service. As mandatory CMRS 911 and E-911 call forwarding is implemented, carriers will have an opportunity to insert the appropriate state’s limited liability terms into their subscriber service agreements. This does not, however, address the agreements currently in effect. There is generally no basis for requiring extant subscribers to execute revised service agreements with their carriers, and doing so would be a monumental financial and administrative burden, especially for small rural CMRS providers. The

⁶ *MO&O* at ¶ 139 (emphasis added).

⁷ *Id.* at ¶ 140 (emphasis added).

⁸ *Id.* at ¶ 139.

consequences of succumbing to liability for small and/or rural carriers cannot be overstated. A single failed 911 call, placed by a non-subscriber or originating in a jurisdiction that subjects a carrier to potentially unfavorable laws of another state, could give rise to a suit that would financially devastate a rural carrier to the point of bankruptcy if it has no liability protections.

RTG supports Petitioners' recommendation that CMRS carriers should be permitted to file informational tariffs with the Commission setting forth carriers' terms and conditions for the provision of E-911 service to subscribers and non-subscribers and choice-of-law determinations.⁹ RTG further agrees with CTIA that such permissive tariffing should not be subject to prior Commission approval or review, or require the filing of cost support data.¹⁰ As CTIA notes, E-911 services are not revenue-generating, and therefore cost support data is unnecessary.¹¹ The Commission has already agreed that "it would appear reasonable for a carrier to attempt to make the use of its network by a non-subscriber subject to the carrier's terms and conditions for liability."¹² This is one way to accomplish this goal. The Commission's treatment of similarly situated interstate, interexchange 1+ dial-around service providers provides the supportive precedent for permitting CMRS carriers to file permissive informational tariffs in the context of E-911 service.¹³

⁹ BellSouth Petition at 3-6; CTIA Petition at 12-14.

¹⁰ CTIA Petition at 13.

¹¹ *Id.* at 13-14.

¹² *MO&O* at ¶ 140 (footnote omitted).

¹³ CTIA Petition at 14 and note 33.

RTG additionally agrees with BellSouth that the Commission should amend Section 20.18 of its rules to clarify that CMRS providers will not be obligated to provide E-911 service within a state until the state limits the liability of CMRS providers regarding the provision of E-911 services.¹⁴ In the absence of a single, uniform national policy limiting liability, a carrier is protected from liability only to the extent afforded it by the state jurisdictions to which it is subject. The Commission's solution to the liability problem is to "encourage the public safety community, wireless carriers, as well as state governments, to continue their efforts to develop mutually acceptable indemnification agreements . . .".¹⁵ It is therefore incumbent upon the Commission to respect that such agreements take time to complete, and that in many carriers' cases, a particular carrier must coordinate with multiple states. RTG agrees with BellSouth that carriers require forbearance from E-911 obligations until limited liability agreements are in place and subject to public awareness. If CMRS providers must walk the plank, they should at least be afforded some buoyancy.

¹⁴ Bell South Petition at 7.


¹⁵ *MO&O* at ¶ 140.

CONCLUSION

For the foregoing reasons, RTG respectfully requests that the Commission grant BellSouth's Petition and that portion of CTIA's Petition related to E-911 limited liability. To not do so would be a mistake of "Titanic" proportions.

Respectfully submitted,

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